



March 21, 2022

The Honorable Graham Filler
Chair, House Judiciary Committee
Anderson House Office Building
N-1197 House Office Building
Lansing, MI 48933

Re: Opposition to HB 5485, HB 5486, and HB 5487 (Disclosure of Third-Party Seller Information on Online Marketplaces)

Chair Filler and members of the Committee,

On behalf of the undersigned member companies of the Coalition to Protect America's Small Sellers (PASS), we write to respectfully express our opposition to HB 5485, HB 5486, and HB 5487. While we share the goal of protecting consumers and curtailing organized retail crime (ORC), this legislation does little to achieve that goal and instead imposes regulations that will discourage Michigan small businesses and entrepreneurs from increasing their sales through online marketplaces. We are also concerned that these bills force these sellers to choose between compromising private information or suspending sales on online platforms. We do not believe small businesses should be forced to make this choice – certainly not now as many are struggling to remain open.

Legislation like HB 5485, 5486 and 5487 introduced at the behest of Big Box retailers has been rejected in at least 14 other states. One state, Arkansas, rushed onerous legislation through the

process in three weeks with little debate despite substantial criticism of the law, including the harm it poses to legitimate small businesses selling online.

Congress is moving forward on this issue and the current version of the federal INFORM Consumers Act includes language that substantially differs from the bills pending before the committee. Further, the federal legislation specifically preempts state laws to prevent a patchwork of conflicting requirements. The PASS Coalition¹, along with major retailers, manufacturers, and consumer groups, endorsed² the current version of the federal INFORM Consumers Act because it provides necessary protections for consumers and small business sellers that are not included in the bill before you. **Therefore, we strongly urge the committee against moving forward with this legislation.**

Chief among our concerns are the disclosure requirements under the bills which run counter to public sentiment and most laws regarding consumer privacy and data security. Because of the low threshold, even relatively small sellers would be required to disclose sensitive personal information like their full name, home address, telephone number, and email address on each of their product listings. While there are attempts to provide some protections to home-based sellers in the bill, these exceptions are insufficient and will risk exposing sellers to harassment, fraud or worse. This will ultimately have a chilling effect on eCommerce by deterring many Michigan small businesses and residents from selling online.

The bill's proposed thresholds and requirements are overly prescriptive and impractical. The volume of sellers on our platforms who would be required to disclose personal information on each of their listings under the bill is staggering. Given the rigid timelines (e.g, 24-hours for sellers to provide information) and verification processes mandated under the bills, Michigan small businesses who sell on online marketplaces would be burdened. Additionally, the bills take a one-size-fits-all approach that fails to provide adequate flexibility to vastly different business models as not all online marketplaces are the same.

The requirements of the legislation also disregards the substantial existing efforts to protect consumers deployed by online marketplaces. Our member companies heavily invest in technological tools, processes, and personnel to prevent prohibited, stolen, and counterfeit items from being listed on our platforms. We proactively partner with retailers, rights owners, and regulators; implement clear policies; and work collaboratively with law enforcement and

¹ <http://www.protectsmallsellers.org/newsroom/pass-coalition-endorses-new-inform-consumers-act-applaud-reps-jan-schakowsky-d-il-and-gus-bilirakis-r-fl>

² <https://www.buysafeamerica.org/joint-letter-inform-to-congress>

other relevant stakeholders to enforce our policies to find, remove, and hold accountable bad actors unlawfully using our marketplace.

We appreciate the opportunity to share our opposition to HB 5485, HB 5486, and HB 5487. As a coalition of third-party eCommerce platforms powered by small sellers, including hundreds of thousands across Michigan, our companies are deeply committed to protecting consumers who use our platforms, including preserving the privacy of our sellers. We welcome the opportunity to work with the Legislature and other partners to combat illegal goods, protect consumers, and support small businesses, but unfortunately, these bills do not advance these important goals.

Sincerely,

PASS Coalition

eBay

Etsy

Mercari

OfferUp

Pinterest

Poshmark

Redbubble

1st Dibs

cc: Members of the House Judiciary Committee

About the PASS Coalition

The PASS Coalition is a policy-oriented coalition of third-party marketplaces and eCommerce platforms that have joined forces to educate policymakers on the benefits and variance of our business models while also working collaboratively to find thoughtful solutions to consumer protection, competition and economic development issues impacting eCommerce. Together, our member companies enable hundreds of thousands of small businesses and individual sellers throughout Michigan to reach customers down the street and around the world. These online small businesses and individual sellers are located across Michigan communities large and small, rural and urban, and provide access to consumers for a wide variety of products. These entrepreneurs have been especially instrumental during the COVID-19 crisis in helping consumers receive essential goods while sheltering in place or socially distancing.